

RESPONSE TO COMMENTS

Renewal of Information Collection Request for Continuous Release Reporting Requirement RQ102-CR2

**U.S. Environmental Protection Agency
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INTRODUCTION

This document contains EPA's responses to the public comments submitted by various interested parties on the *Renewal of Information Collection Request for the Continuous Release Reporting Requirements* [102RQ-CR2].

EPA appreciates the public's participation in this collection process. Pursuant to section 3506(c)(2)(a) of the Paperwork Reduction Act (PRA), EPA solicited comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of EPA, including whether the information will have practical utility.
2. Evaluate the accuracy of EPA's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

In the solicitation for comments, EPA invited commenters to provide their views on the various options EPA proposed, new approaches EPA has not considered, the potential impact of the various options (including possible unintended consequences), and any data or information that the commenters would like EPA to consider during the development of the final action. EPA provided suggestions for helping commenters prepare their comments on the ICR.

In preparing this response to comment document, EPA reviewed all eight comments submitted by the public on the *Renewal of Information Collection Request for the Continuous Release Reporting Requirements*, identified the issues raised by the comments, summarized commenters' statements relevant to each issue, and developed responses for each issue. The major issues into which the comments have been categorized are:

Disagreement with EPA's estimate of the number of reports required and anticipated cost of this reporting requirement;

Failure to take into account the impact of a 1999 EPA *Interim Guidance* document on federally permitted releases for air emissions;

Issues raised in response to the EPA's Interim (and Final) Guidance on CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions (Docket Number EC-G-1999-029); and

Requests to extend the public comment period for the *Renewal of Information Collection request for the Continuous Release Reporting Requirements* document.

SECTION 1. DISAGREEMENT WITH ESTIMATED NUMBER OF REPORTS AND COST

Summary of Comments:

Three organizations disagreed with EPA's calculations regarding the number of reports needed to comply with the regulation and the costs associated with submitting these reports.

One commenter stated that its organization "strongly disagrees with both the number of reports and the anticipated costs of this reporting requirement." This commenter also stated that "EPA must use numbers that reflect an accurate assessment of the total burden associated with continuous release reporting and must include in that assessment the enormous costs that will be incurred" Another commenter similarly stated that "EPA should use numbers that reflect an accurate assessment of the total burden associated with such reporting," and also stated that EPA's estimates are "questionable."

One commenter stated that "issuance of EPA guidance in a form similar to that issued on December 21, 1999 will impose significant additional costs of additional reporting or of increased reliance on other reporting exemptions" The commenter also stated that "the agency must take into account the costs and burdens of such guidance"

EPA's Response to Comments:

Number and Cost of Reports. EPA uses historical data when estimating the number of releases that will be reported to the NRC during the next collection period (2001-2004). Historical data gathered annually is the most reliable basis the Agency has for making estimates and has been used in every renewal estimation (for the Continuous Release Reporting Requirement) without adverse public comment. One of the objectives of the information collection request renewal process is to provide the public with an opportunity to comment on EPA's estimates and the methodology used to determine these numbers. Although EPA received comments questioning the estimates, the Agency did not receive any comments that included supporting data or information sufficient to justify altering its historical approach to estimating.

Accuracy of Assessment. EPA relied on the above-mentioned method of using historical reporting data to derive the numbers used to estimate the total burden associated with reporting. EPA assumes full compliance during the past years' reporting of these costs. As discussed above, this historical method is the most reliable basis for such estimates.

SECTION 2. IMPACT OF RECENT EPA INTERIM GUIDANCE DOCUMENT

Summary of Comments:

Three commenters stated that EPA had failed to take into consideration the impact of the *Interim Guidance on Federally Permitted Releases* ("Interim Guidance").¹ All three commenters stated that the *Interim Guidance* increases the burden of reporting and must be taken into account when considering the ICR renewal.

¹ "Interim Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions," (64 FR 71614, December 21, 1999).

One commenter stated “we believe that the actual burden associated with such reporting in this ICR must accurately reflect the expanded interpretation of reportable releases reflected in EPA’s *Interim Guidance*”

A commenter made a similar statement; “the agency must take into account the costs and burdens of such guidance”

One commenter stated “[t]his estimate, however, fails to take into account a recent EPA guidance document that would broaden the episodic and continuous release reporting requirements in ways that would significantly affect our members.” The commenter also asserted that “[t]he burden associated with such reporting in this ICR must reflect the expanded requirements contained in EPA’s *Interim Guidance* or in any successor guidance that EPA published on this issue.”

EPA’s Response to Comments:

EPA disagrees that the *Interim Guidance* represents an expansion of the requirement to report releases. EPA’s purpose in issuing the *Interim Guidance* was to respond to requests for clarification of the CERCLA definition of federally permitted releases as it applies to air emissions under the Clean Air Act (CAA). The *Interim Guidance* does not impose new reporting requirements or change the types of releases that must be reported under CERCLA section 103. EPA assumes that there was full compliance with reporting requirements in the past when it uses past data to estimate burden. Since the *Interim Guidance* merely clarifies, but does not expand reporting requirements, the effects of the federally permitted release exemption are reflected in the historical data used to estimate the burden. Any change in the future volume of reporting that might be attributable to the issuance of the *Interim Guidance* might be the result of an increase in compliance due to greater understanding of the scope of the federally permitted release exemption, but would not be an increase in the burden due to expansion of the requirement to report.

**SECTION 3. INTERIM GUIDANCE ON CERCLA SECTION 101(10)(H)
FEDERALLY PERMITTED RELEASE DEFINITION**

Summary of Comments:

EPA received six comments on the Federal Register notice, *Interim Guidance* that was published for public comment on December 21, 1999. Four comment letters addressed the *Interim Guidance* (two commenters submitted two letters each). The public comment period for the *Interim Guidance* closed on April 20, 2000. EPA appreciates that the commenters submitted copies of their comments on the December 21, 1999 Federal Register notice for EPA’s consideration in the final action on this Renewal of Information Collection Request.

One commenter addressed the *Interim Guidance* by stating that “the hundreds of thousands of new reports of routine, federally–authorized releases will overwhelm the entities receiving them” The commenter stated that “[t]he new reporting burden is significant for combustion sources releasing nitrogen oxide (“NO”) or nitrogen dioxide (“NO_x”).” Another commenter similarly viewed the EPA *Interim Guidance* as “a major change in EPA policy, imposing potentially significant new burdens.”

One commenter was concerned with the “avalanche of additional reporting required by the *Interim Guidance*” The commenter believes that this “additional reporting” would “overwhelm the emergency response authorities (e.g., NRC, SERCs, LEPCs).”

Another commenter questioned whether “EPA has the legal authority to define a ‘federally permitted release.’” This commenter stated that the *Interim Guidance* was “arbitrary and capricious.”

EPA’s Response to Comments:

As previously stated, EPA does not believe that the *Interim Guidance* will increase the reporting burden for this Renewal of the Information Collection Request for continuous releases. The *Interim Guidance* merely clarifies the interpretation that EPA maintained for the federally permitted release exemption for certain air emissions. The comments on the *Interim Guidance* are addressed in a separate response to comment document. The response to comment document for the Final Guidance will be available under EPA Docket Number EC-G-1999-029 upon publication of the Final Guidance.

The comments stating that there is a “new reporting burden” or “significant new burdens” have been considered and EPA expects to issue a revised guidance that will clarify its position on this issue. To address the commenters’ concerns for NO and NO₂ releases, EPA intends to consider an administrative reporting exemption for NO and NO₂ releases. EPA is using its enforcement discretion to exempt sources from having to report their NO_x emissions pending its decision whether an administrative reporting exemption is warranted.

EPA does not agree that the *Interim Guidance* will result in an “avalanche of additional reporting.” Whether routine or not, facility owners that release an amount of hazardous substance that equals or exceeds the reportable quantity have always been required to report the release. EPA expects that many routine releases will qualify for reporting as continuous releases. EPA also analyzed possible areas of overlap with other regulations. The Agency has concluded that there are limited areas of overlap with reporting requirements under other statutes and provisions. Statutory requirements under CERCLA have not changed the federal response authorities, as well as the State and local response authorities, must be notified immediately of hazardous substance releases that may pose a threat to public health or welfare or the environment. For this reason, EPA does not expect “additional reporting” to result from the *Interim Guidance*.

As stated above, the *Interim Guidance* merely clarifies EPA’s interpretation of the federally permitted release exemption for certain air releases. EPA’s “legal authority” to issue the *Interim Guidance* is defined in a separate response to comment document, EC-G-1999-029.

SECTION 4. REQUEST FOR EXTENSION OF COMMENT PERIOD

Summary of Comments:

One commenter requested that EPA grant an extension of the public comment period for the Proposed Renewal of Information Collection Request. The commenter commended EPA for “recognizing that the renewal of a collection of information of this sort is subject to opportunity

for public comment” and asserted that EPA should “wholly re-start the 60-day comment period.” Furthermore, the commenter stated that “making the draft ICR and supporting/justification

documents available to the public for comment at this stage of the ICR renewal process is in fact EPA policy.”

EPA’s Response to Comments:

EPA agrees with the commenter, and therefore extended the public comment period for the renewal collection. The Agency also agrees that the public must be able to review the draft Information Collection Request and supporting documents. Therefore, EPA made the draft Information Collection Request and associated supporting and justification documents available for public comment in the docket (RQ102-CR2) and on the internet at:

<http://www.epa.gov/superfund/resources/rq/icr.htm>.